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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1981

No. _____

PHILIPPINE PRESIDENT LINES, INC., MANILA,
Petitioner,

v.

JAMES TURNER and JAPAN LINE, LTD., Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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The petitioner, Philippine President Lines, Inc., Manila, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 27, 1981 in, Turner v. Japan Line, Ltd., (9th Cir. 1981) 651 F.2d 1300. Docket Nos. 79-4060, 79-4062, 79-4182; CV. 75-727 ORS.

QUESTION PRESENTED FOR REVIEW

Should a "vessel" have a higher standard of care to United States longshoremen when loading cargo

in foreign ports than when loading cargo in United States ports? Turner v. Japan Line, Ltd., (9th Cir. 1981) 651 F.2d 1300. Or did the U. S. Supreme Court's decision in Scindia Steam Navigation Co. v. De Los Santos, determine a vessel's care standard to U.S. longshoremen regardless of where the cargo is loaded? Scindia Steam Navigation Co. v. De Los Santos, ____ U.S. ____, 101 S.Ct. 1614, 68L.Ed.2d 1 (1981).

TABLE OF CONTENTS

	Page
Opinion Below	3
Jurisdiction	3
Statutory Provisions Involved	3
Statement of the Case	4
Reason for Granting the Writ	6
1. The Decision Below Imposes on a "Vessel" a Higher Care Standard to U.S. Longshoremen When Loading in Foreign Ports Than When Loading in U.S. Ports Contrary to Scindia Steam Navigation Co. v. De Los Santos, ___ U.S. ___, 101 S.Ct. 1614, 68 L.Ed.2d 1 (1981)	6
Conclusion	9

APPENDIX

A.	Opinion of the Ninth Circuit	App -1
B.	Opinion of the District Court for Oregon	App-16
C.	Judgment of the Ninth Circuit	App-20
D.	Order on Rehearing of The Ninth Circuit	App-21
E.	33 U.S.C. §905(b)	App-22

INDEX OF AUTHORITIES

Page

Cases Cited

Omstead v. Brader Heaters, Inc., 5 Wash App. 258, 487 P2d 234 (1971), Aff'd 80 Wash 2d 720, 497 P2d 1310 (Sup. Ct. 1972) 8

Scindia Steam Navigation Co. v. De Los Santos, ____ U.S. ____, 101 S.Ct. 1614, 68 L.Ed.2d 1 (1981) 2, 6, 7, 9

Statutes

28 U.S.C. §1254(1) 3, 4
33 U.S.C. §901 et seq 8
33 U.S.C. §905(b) 4, 5, 6

OPINION BELOW

The appendix includes the opinion of the Court of Appeals which was reported at 651 F.2nd 1300 (9th Cir. 1981) (App-1), that judgment (App-20), and the order denying the motion for rehearing of Philippine President Lines, Ltd. (App-21). The opinion of the Magistrate of the District Court for the District of Oregon is at App-16).

JURISDICTION

The judgment of the Ninth Circuit was entered on July 27, 1981 (App-1). Philippine President Lines, Ltd. timely filed a petition for rehearing on August 7, 1981. The order of the Ninth Circuit denying that petition was entered on May 24, 1982 (App-20). This court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

One federal statute is involved. The opinion below fixes the negligence for which a "vessel" is

liable under 33 U.S.C. §905(b) when loading cargo in a foreign port.

STATEMENT OF THE CASE

Federal jurisdiction was originally invoked pursuant to 28 U.S.C. §1332.

On June 13, 1974 at Longview, Washington, packages of plywood defectively stowed in the hold of the PRESIDENT QUEZON gave way injuring longshoreman James Turner who was employed to discharge the plywood. (R. 77-78, 104-105). Philippine President Lines, Ltd., owner of the PRESIDENT QUEZON, had time-chartered it to Japan Line (Ex. 2). Pursuant to that charter, Japan Line hired a Japanese stevedore to load the packages of plywood aboard the PRESIDENT QUEZON in Japan (R. 210-211). Japan Line also hired a Japanese surveyor to inspect and approve the loading and stowage of the plywood (R. 218).

Longshoreman Turner sued Japan Line and

Philippine President Lines for "negligence" under 33 U.S.C. 905(b) (R. 78). There was no contention or evidence that the master or crew of the vessel had knowledge of the defective stowage in Japan. Philippine President Lines cross-claimed against Japan Line for full indemnity (R 214-216). Japan Line did not file an answer to the cross-claim nor seek a stay pending arbitration.

Upon trial of Turner's claim, the jury found in favor of Turner and against both Japan Line and Philippine President Lines returning a verdict in excess of $950,000 (R. 413). The trial judge granted both defendants judgment N.O.V. ruling the defendants owed no duty under 33 U.S.C. $905(b) for the negligence of a foreign stevedore.

The trial judge found there was no evidence upon which the jury could have found that the master or crew of the vessel should have known of the defective stowage by the Japanese stevedore (R. 530-532).

Longshoreman Turner appealed the judgment N.O.V. and the two defendants cross-appealed on the grounds of the excessiveness of the jury verdict. (R. 546-547, 554-555).

The Ninth Circuit reversed the trial judge finding the defendants had breached a newly created duty under 33 USC §905(b) to supervise the work of a foreign stevedore. (App. 8-9). 651 F2d at 1304.

Philippine President Lines petitioned for rehearing on August 7, 1981. On May 24, 1982, that petition was denied (App. 21).

REASONS FOR GRANTING THE WRIT

1. The Decision Below Imposes on a "Vessel" a Higher Care of Standard When Loading in Foreign Ports When Loading in U.S. Ports Contrary to the Implications of Scindia Steam Navigation Co. v. De Los Santos, U.S. , 101 S.Ct. 1614, 68 L.Ed.2d 1 (1981).

The Ninth Circuit recognized this court held

in Scindia that a shipowner had no continuing duty to inspect or supervise the cargo operations of the stevedore. Nevertheless, the Ninth Circuit decided that this holding was irrelevant when cargo operations occur in a foreign port. The Ninth Circuit noted that the third-party primarily negligent was not the injured longshoreman's employer, but rather the foreign stevedore who the injured longshoreman would find difficult to sue. Thereby leaving the injured longshoreman with "no practical remedy". The Ninth Circuit solved that problem by creating an exception to Scindia holding the shipowner had a continuous non-deligable duty of supervising cargo operations of a foreign stevedore.

> ". . . the negligence of the vessel is premised on failure of the master to exercise reasonable care in supervision of the work of the Japanese stevedore." 651 F.2d at 1304; App-8.

> "We hold, therefore, that the vessel had a duty to protect the plaintiff against concealed dangers created by a foreign stevedore which the vessel could, in the

> exercise of reasonable care, have corrected or warned of." 651 F.2nd at 1304; App-9.

In fashioning this exception, the Ninth Circuit failed to consider remedies available to the injured longshoreman. He always has the compensation rights against his employer given him by the Longshoremen's and Harborworkers' Act. 33 U.S.C. §901 et seq. The foreign stevedore would be amenable to suit in the State of Washington under its Long Arm Statutes. See Omstead v. Brader Heaters, Inc., 5 Wash App. 258, 487 P2d 234 (1971), Aff'd 80 Wash 2d 720, 497 P2d 1310 (Sup. Ct. 1972).

Instead, the Ninth Circuit gave the injured longshoreman a "practical remedy" against the otherwise non-liable shipowner or charterer leaving to them the task of seeking reimbursement from the primarily negligent foreign stevedore. In transferring the "no-practical remedy" from the longshoremen to the shipowner, the Ninth Circuit placed on the shipowner a care standard higher than that required by 33

U.S.C. §905(b) and this court's decision in Scindia Steam Nav. Co. v. De Los Santos, ___ U.S. ___, 101 S.Ct. 1614, 68 L.Ed.2d 1 (1981).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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